

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTEENTH REGION

Shawnee, Oklahoma

WOLVERINE TUBE, INC.

Employer

and

Case 17-RC-12161

ARKANSAS REGIONAL COUNCIL OF CARPENTERS affiliated with  
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 1/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 2/

All full-time and regular part-time maintenance employees, including millwrights, electricians, machinists, blade filers, pin grinders, tool crib employees, draftsmen, utility employees and relief supervisors employed by the Employer at its Shawnee, Oklahoma facility, excluding production employees, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

WOLVERINE TUBE, INC.

ARKANSAS REGIONAL COUNCIL OF CARPENTERS affiliated with UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA**LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Region 17 office on or before, **March 26, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **April 2, 2003**.

Dated March 19, 2003

at Overland Park, Kansas

/s/ F. Rozier Sharp

Regional Director, Region 17

1/ The Employer is a Delaware corporation engaged in the manufacturing of copper tubing at its Shawnee, Oklahoma facility.

2/ The Petitioner seeks a maintenance unit of approximately 45 employees, consisting of all full-time and part-time employees employed in the engineering department at the Employer's facility, including millwrights, maintenance shop, and machine shops, excluding all office clerical employees, production employees, guards and supervisors as defined in the Act. The Employer asserts that the only appropriate unit consists of approximately 403 employees, consisting of all production and maintenance employees, including hourly employees employed in the converting department, industrial department, technical department, shipping, warehouse department/engineering department, tool crib, WOW, and quality lab employees.

### **THE ISSUES AND DETERMINATION**

In addition to the above unit scope issue, other issues were raised at the hearing. The Petitioner, contrary to the Employer, would exclude maintenance relief supervisors from the unit because they are supervisors within the meaning of the Act, and would exclude tool crib employees, blade filers, pin grinders, the utility employee, and the draftsman from the unit on the basis that they do not share a sufficient community of interest with maintenance employees. For the reasons set forth below, I find that a unit of maintenance employees, including millwrights, electricians, machinists, blade filers, pin grinders, tool crib employees, draftsmen, utility employees and relief supervisors, but excluding production employees, office clerical

employees, guards and supervisors as defined in the Act, and all other employees, constitutes an appropriate unit at the Employer's Shawnee, Oklahoma facility.

### **THE FACTS**

#### **The Employer's Facility**

The Employer manufactures copper tubing at its Shawnee, Oklahoma facility. The process starts with raw material, which is melted down into billets, each weighing approximately 350 pounds. The billet is sent to a hydraulic press where a base tube is made. The base tube is roll formed down to a small tube and then reduced in size in various departments. Straight lengths are produced for the technical department and winded coil is produced for the industrial department.

The Employer's production operation consists of a converting department, industrial department, technical department, shipping and receiving department, quality control and warehouse. Its maintenance and engineering operation consists of millwrights, electricians and machinists who work out of the maintenance area. The maintenance area includes an electrical shop, millwright shop and machine shop.

The employees work three shifts-- the first shift is from 7 a.m. to 3:30 p.m., the second shift is from 3:00 p.m. to 11:30 p.m., and the third shift is from 11:00 p.m. to 7:30 a.m.. All departments work these shifts and some employees are assigned to weekend crews.

All new employees are given new employee orientation and receive the Employer's handbook and various workplace policies. Moreover, all employees receive the same benefits, use the same parking lot, break areas, bathrooms, and bulletin boards, and have payroll processed

by the accounting department. All employees have vacations and are subject to a 10% rule, which requires that no more than 10% of the employees in particular departments are off work at a given time. All employees share common break areas, restrooms, parking lots and bulletin boards. The employees are subject to the same voluntary and involuntary layoff policy, and the Employer recognizes plant-wide seniority, which governs layoffs, job bids, shift preference and benefit eligibility.

#### The Production Employees

Approximately 358 production employees are employed at the facility. The record discloses that they work under one roof in the converting, industrial, technical and shipping/warehouse departments, in addition to quality labs and as part of "WOW," an acronym for "war on waste." The latter is comprised of four employees who work throughout the plant on safety and quality issues and are drawn from all departments.

The production employees in the converting department melt down raw or scrap copper into the billets described above. They are supervised by converting department superintendent Dick Brown, and converting mill supervisor Rhonda Cawvey on the day shift, converting department supervisor Carl Rackley on the second shift, and shift superintendent Perry Bingham on the third shift.

The technical department employees work with processed copper and produce straight lengths or technical tubes. These tubes are used as condensing tubes or heat and air exchanger tubes. The technical department

employees are supervised by technical department superintendent Mike Williams and Production Scheduler George Halbert on the day shift, shift superintendent Dennis Bullock on the second shift, and technical department supervisor Mike Walker on the third shift.

The industrial department employees reduce the copper into winded coil for use as water tube products. They are supervised by industrial department superintendent Garey Wright and industrial mill supervisor Randy Gardner on the day shift, industrial department supervisor John Irick on the second shift, and shift superintendent Perry Bingham on the third shift.

When a breakdown occurs, a production employee fills out a work order and maintenance employees are contacted through the Employer's paging system. The production employee either pinpoints the problem or the maintenance employee troubleshoots the machinery. The maintenance employee does the necessary repairs and the production employee may press a button or move a switch to put the machine back in operation.

The production employees are paid under the labor pay grade system which ranges from Grade 1 (\$9.37 an hour) to Grade 13 (\$19.68), although no production employee is paid the highest rate. The production employees are trained on the machines they operate which consists of two week on-the-job training. The production employees wear maroon uniforms.

#### The Maintenance Employees

Three electricians, nine millwrights, six machinists, two machine utility employees, one draftsman and one utility employee work on the first shift. Three electricians, 8 millwrights and

3 machinists work on the second shift, and 3 electricians, 10 millwrights and 3 machinists work on the third shift.

The electricians do standard electrical work, which involves the breakdown and maintenance of equipment in the plant. The millwrights work on mechanical repairs, including welding. The machinists operate lathes and other equipment in the machine shop and work on breakdowns. The first shift machine tool utility employees work in the maintenance department with one making pins and dies and the other maintaining and sharpening saw blades. The day shift utility person maintains the grounds, mows the lawn, moves snow and tracks down spare parts. The draftsman handles blueprints and is also employed on the day shift.

The maintenance employees' work is generated from a work order system. Thus, when a breakdown occurs, a production employee fills out a work order specifying the repairs he believes are necessary. The maintenance employee is paged to the site of the breakdown and does whatever repair work is needed. He returns to the maintenance department and works on repairing parts in the particular shop in which the employee is assigned. On occasion, the breakdowns may require an electrician, millwright and machinist working together to repair the problem.

When the maintenance employees are not working on breakdowns they do some preventive maintenance along with repair work in their shops. When the plant shuts down for a holiday, affecting production, maintenance employees, on occasion, perform preventive maintenance.

The maintenance employees move around the plant on golf carts. They have their own tool boxes which contain a substantial amount of personal tools. When maintenance employees need gloves or small tools they go to the tool crib, fill out a card and place it in a slot. They take items from the tool crib without needing a supervisor's authorization. They also have access to a separate building referred to as the Butler Building. It contains spare parts, and some equipment for the day shift utility person (groundskeeper) such as lawn mowers and weedeaters.

The maintenance employees are not supervised by production supervisors. Rather, they report to relief and regular supervisors, who maintain offices in the maintenance area. They are supervised on the day shift by maintenance/engineering department manager Bob Hargrove, maintenance superintendent John Scheidt, and maintenance schedule planner Mike Murray. The relief supervisors, who are millwrights, work the second and third shift and check to see whether the employees get their breaks and make sure everything is running properly. They assign jobs to the maintenance employees. The second and third shifts are also under the general supervision of Shift Superintendents Dennis Bullock (second shift) and Perry Bingham (third shift).

The maintenance employees wear black or charcoal gray uniforms.

The electricians, millwrights and machinists acquire journeyman status and labor grade 12 pay after 6,000 hours experience in their particular skill. Although several employees have moved from production into maintenance jobs, rarely have employees moved back into production from maintenance.



The record discloses that new hires or transferred employees, with no previous maintenance experience or craft skills, must complete the 6000 hours (2 1/2 to 3 years) of on-the-job training and course work to reach the journeyman level at Pay Grade 12. A higher grade, Pay Grade 13, is reserved for the electrician craft.

The record shows that maintenance employees have brief conversations with production employees when a breakdown occurs. Thus, the amount of time for a maintenance employee to determine the nature of the problem and to get the operator back to work is about 3 to 5 minutes. After that, the maintenance worker moves on to another breakdown or returns to the maintenance department to do shop work. Maintenance employees are not assigned production work, although they may volunteer to do it on overtime. They are required to have their own tools and to maintain personal tool boxes in the maintenance area. Maintenance employees work during holiday shutdowns on repairs and modifications while production workers are off work.

Temporary workers regularly work in production but never work in maintenance.

#### The Tool Crib Employees

The tool crib employees distribute parts, tools and safety equipment to the production and maintenance employees at the facility. The safety equipment includes safety glasses, gloves, sleeves and other specialty items. The tool crib is located adjacent to the maintenance department and across from the technical department.

The maintenance employees have access to the tool crib and do not require supervisory authorization to receive items from the tool crib. Production employees do need such authorization.

#### The Pin Grinder and Blade Filer

These employees work in the maintenance department on the day shift and are supervised by maintenance supervisors. They are listed as machine tool utility by the Employer.

The pin grinder makes pins and dies. He operates a machine and grinds raw material to specifications. He has the same 6,000 hours training requirement as other maintenance employees.

The blade filer maintains and sharpens saw blades using a sharpening machine in the maintenance department. If he were absent, a machinist would fill in for the blade filer.

#### The Utility Employee

The utility employee or groundskeeper is included under maintenance by the Employer. He maintains the yard and grounds. His duties include mowing the lawn, moving snow, and retrieving spare parts. He stores his equipment in the Butler Building where the maintenance employees also store equipment.

### The Draftsman

The draftsman position is also included under maintenance by the Employer. His job is to take care of blueprints and to do any other draftsman work that might be required.

### The Relief Supervisors

Relief supervisors are present on each shift in maintenance. They are drawn from the millwright craft and are paid \$2.00 more per hour than the maintenance employees. They give initial breakdown assignments to the employees on their shift.

The only relief supervisor specifically addressed on the record was Bobby Stapp. The record discloses that Stapp is a millwright and, during his shift, he checks on employees to make sure that they take their breaks and that things are running smoothly.

The relief supervisors hand in time cards for the maintenance employees on their shift. At most, the relief supervisor “channels” the time cards up to his supervisor who, in turn, sends the cards up to his superior, where a decision is made as to whether an employee has been late or tardy.

The relief supervisors have no authority to hire, fire, discipline or reprimand. They take vacations and maintenance employees substitute for them in their absence.

## **THE POSITIONS OF THE PARTIES**

### **The Petitioner**

The Petitioner asserts that a unit of maintenance workers is appropriate. It contends that they possess specialized skills. It maintains that production jobs fall between Pay Grades 1 and

10, with most production employees being paid between Pay Grades 6 and 8. Therefore, production employees are paid substantially less than maintenance employees.

The Petitioner states that maintenance employees have very little interaction with production employees. It points to record evidence of brief conversations between production and maintenance employees when a breakdown occurs.

The Petitioner asserts that the maintenance employees do different work, are located in separate areas, have separate supervision and wear different colored uniforms. It notes that production employees are never assigned to do maintenance work and do not perform maintenance on a voluntary overtime basis. It points out that maintenance employees are not assigned production work, although they may volunteer to do it on overtime.

The Petitioner seeks to exclude tool crib employees, blade filers, pin grinders, utility employees and draftsmen from the maintenance unit it seeks. It asserts that the tool crib is in a separate area near maintenance and production. It contends that there are no special skills or long-term training required for the tool crib. Further, tool crib employees are under the direction of the accounting department and do not perform maintenance work or have such skills.

As to the blade filer and pin grinder, the Petitioner asserts that these jobs are more akin to production, and have no long-term training or special skills. Rather, the employees in question perform routine production-type jobs, filing blades and grinding pins.

The Petitioner would exclude the utility employee and the draftsman on the basis that they do not share a sufficient community of interest with maintenance employees.

Finally, the Petitioner contends that maintenance relief supervisors are statutory supervisors and must be excluded from the unit. It asserts that the relief supervisors make daily assignments, record absences/tardiness on behalf of the Employer and recommend discipline. They do not perform maintenance work and spend a majority of their time in their offices. It points out that relief supervisors are paid more than rank-and-file maintenance employees and that maintenance employee Bobbie Herin referred to his relief supervisor, Bobby Stapp, as his supervisor during his testimony. The Petitioner contends that relief supervisors exercise authority on behalf of the Employer in making work assignments and directing work, exercising independent judgment.

#### **The Employer's Position**

The Employer notes that the maintenance department employees are responsible for machinery breakdown and repair work throughout the plant. It asserts that maintenance employees spend 90% of their time tending to breakdowns in the facility. It states that maintenance employees work "in an integrated fashion with all the equipment and people in the other departments."

The Employer asserts that second and third shift employees all work under Superintendents Dennis Bullock (second shift) and Perry Bingham (third shift), and thus have common supervision. It notes that the shift superintendents submit a "mill status report" on a daily basis detailing their observations during their shifts.

The Employer contends that all employees fall under a labor pay grade system, which ranges from Grade 1 (\$9.37 an hour) to Grade 13 (\$19.68 an hour). The Employer asserts that

employees interchange throughout its facility. Thus, it has a job elimination policy, which was applied to three maintenance department employees in 1999 when their jobs were outsourced to the Employer's Decatur, Alabama facility. As a result, the three moved to production. Further, the Employer has a rollback policy by which employees have "rolled back" to their production jobs from maintenance when required by business necessity.

The Employer notes that there is no special schooling, proficiency testing or certification required for an individual to become employed in the maintenance department. It points out that of the maintenance employees at its facility, 26 previously held production jobs in the plant, with 13 production employees bidding into maintenance since 1995. It states that employees have moved back into production from maintenance when a performance problem has arisen, citing the example of one employee. In addition, maintenance employees work in production on a voluntary overtime basis.

The Employer contends that its employees are functionally integrated. Thus, production employees prepare work orders, which constitute 90% of the maintenance employees' work, and which takes place in the production area, with the input of production workers. It notes that production workers occasionally bring parts to maintenance for repair. Similarly, maintenance employees interact with shipping employees when parts come to the plant or are shipped out. Furthermore, the Employer asserts that all employees have access to the tool crib and quality lab employees.

The Employer contends that a community of interest exists among the maintenance and production employees. They have the same pay scale, policies and procedures and work the

same shifts. They are similar in the kind of work performed. Thus, they work “hand in glove” when maintenance employees work to repair production employees’ equipment.

The Employer maintains that the employees have similar qualifications, skills and training. Thus, the majority of maintenance employees were hired from the ranks of production employees. Moreover, production employees also receive specialized training for their job functions.

The Employer contends that all of the employees have frequent contact and interchange. The maintenance employees spend 90% of their work day on repairs in the production area. Maintenance employees work overtime in production, and all employees are subject to the Employer’s job elimination and rollback policies.

The Employer asserts that the production and maintenance employees have common supervision, pointing to the shift superintendents over the second and third shifts, who direct all hourly employees, and who have the authority to take or recommend discipline with regard to all employees

The Employer notes that a prior NLRB election in a wall-to-wall unit, involving a different union, was conducted at its facility in 1996.

It contends that, where a broad community of interest is shared with production employees, a separate maintenance unit is inappropriate, citing Monsanto Co., 183 NLRB 415 (1970). It notes that the Board found that any separate community of interest was submerged in the broader community of interest with production employees exhibited by, inter alia, “bump back” procedures, plant-wide seniority, and the same working conditions and benefits. It also

asserts that the Board found that evidence that employees received the same benefits, were subject to the same personnel policies, received comparable wages, shared common break areas, and occasionally permanently transferred into each others' group outweighed separate supervision and employee meetings, so that a community of interest was found, citing Boeing Co., 337 NLRB No. 24 (2001).

## **ANALYSIS**

### **The Standard of Review**

In determining the appropriateness of a unit, the Board looks first to the petitioned-for bargaining unit and, if it describes an appropriate unit, the analysis ends. Dezcon, Inc. 295 NLRB 109, 111 (1989). Indeed, Section 9(b) of the Act does not require the Board to identify the most appropriate unit, but rather an appropriate unit. Morand Brothers Beverage Co., 91 NLRB 409, 418 (1950) enfd. 190 F.2d 576 (7<sup>th</sup> Cir. 1951). A petitioner is not required to seek the most comprehensive grouping of employees unless an appropriate unit compatible with that requested does not exist. P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963). Such a policy aims at guaranteeing employees the fullest freedom in exercising the rights guaranteed by the Act. National Cash Register Co., 166 NLRB 173, 174 (1967).

### **The Petitioned-For Maintenance Unit**

The Employer contends that the only appropriate unit is a wall-to-wall unit. The Petitioner seeks a unit limited to maintenance employees excluding tool crib employees,



employees in the maintenance department who do blade filer and pin grinder work, the draftsman, the utility employee, and all employees described as “relief supervisors.”

In Ore-Ida Foods, 313 NLRB 1016 (1994), the Board found a separate maintenance unit appropriate where the maintenance work performed required a high level of skill in contrast to production work which was relatively routine. It noted that, while the work required that some maintenance employees have extensive contact with, and, at times, the assistance of the production employees, this assistance was incidental to the work regularly performed by the maintenance employees.

I find that this case is similar to Ore-Ida Foods. Thus, the maintenance employees have separate supervision, work in separate areas, and when they work among the production employees on breakdowns, they exercise a high level of skill, as indicated by the substantial training involved for maintenance employees. Thus, they are required to have 6,000 hours of training in their particular skills while production employees are trained for 2 weeks in the operation of their machines.

As the Board noted in American Cyanamid Co., 131 NLRB 909 (1961), it is Board policy to find separate maintenance department units appropriate in the absence of a more comprehensive bargaining history, where the facts of the case demonstrate that the maintenance employees involved have the requisite community of interest, including the degree of skill and common functions, mutuality of interests in wages, hours and other working conditions, commonality of supervision, frequency of contact and interchange with other employees, and functional integration.

As noted above, the record establishes that the maintenance employees share a high degree of skill as indicated by the training required and the pay scale they receive, with journeymen being paid at Grade 12 and some electricians at Grade 13, the top of the scale. They share common supervision in the maintenance department and there is no interchange with production employees except when a maintenance employee volunteers to work overtime in production.

Moreover, the cases cited by the Employer are distinguishable. Thus, in Monsanto, the Board found a maintenance unit inappropriate where the maintenance employees and production employees performed similar functions, frequently worked together using the same procedures and tools, and work functions were frequently reassigned from maintenance classifications to production classifications and vice versa. Those factors are not present in the instant matter. Similarly, in Boeing, supra, the Board found a community of interest where employees did not receive specialized training or participate in an apprenticeship program, and attended the same employer-provided training and certification classes. Moreover, the employees at issue did the same type of work. Clearly, those factors are not present here.

Contrary to the Employer's assertions, I find that a separate maintenance unit is appropriate in this matter.

The two employees who work as blade filer and pin grinder work in the maintenance department and are supervised by maintenance supervision. Moreover, the pin grinder has the same 6,000 hour training requirement as the other maintenance employees, and the blade filer's work is done by a machinist when he is not available. I find the presence of the blade filer and

pin grinder in maintenance and under maintenance supervision, along with similarities in training and to machinist work, gives them a sufficient community of interest with the maintenance unit. Accordingly, I shall include the blade filer and pin grinder in the appropriate unit.

Both the utility employee and the draftsman work in the maintenance department. The utility employee retrieves spare parts, which is related to the maintenance work performed by other maintenance employees. He stores his equipment in the same building as other maintenance employees. The draftsman performs work related to the maintenance work performed by other maintenance employees. In order to avoid splintering the maintenance department by excluding these employees, and as the utility employee and the draftsman share some community of interest with other maintenance employees, I shall include them in the unit.

I find that the tool crib employees share a community of interest with the maintenance employees. Thus, their work site is adjacent to the maintenance department and maintenance employees have frequent contact with the tool crib employees when they access parts, tools and equipment. I find that this frequent contact establishes a sufficient community of interest and I shall include tool crib employees in the appropriate unit.

### **The Status of Relief Supervisors**

Section 2(3) of the Act excludes "any individual employed as a supervisor" from the Act's definition of "employee," thereby excluding supervisors from the Act's protections.

Section 2(11) of the Act defines a "supervisor" as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the

exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) has been interpreted to set forth a three-part test for determining supervisory status. Employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment and (3) their authority is held in the interest of the employer. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 121 S. Court. 1861, 1867, 149 L.Ed.2d 939 (2001).

The burden of proving supervisory status lies with the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., supra; Michigan Masonic Home, 332 NLRB No. 150, slip. op. at 1 (2000). The Board has been careful not to construe the language of the statute relating to supervisory status too broadly, because once an individual is found to be a supervisor, that individual is denied the rights of employees protected by the Act. St. Francis Medical Center-West, 323 NLRB 1046 (1997); Hydro Conduit Corporation, 254 NLRB 433, 437 (1981). In enacting Section 2(11), Congress emphasized its intention that only truly supervisory personnel vested with genuine management prerogatives should be considered supervisors and not straw bosses, leadmen, set-up men and other minor supervisory employees. See KGW-TV, 329 NLRB 378 (1999); Chicago Metallic Corporation, 273 NLRB 1677, 1668 (1995), aff'd in relevant part 794 F.2d 527 (9<sup>th</sup> Cir.1986). See also Providence Hospital, 320 NLRB 717, 725 (1996), citing McCollough Environmental Services, 306 NLRB 565 (1992). When the evidence is in conflict or inconclusive with regard to particular indicia of supervisory status, the Board

will not find supervisory status based on those indicia. Davis Memorial Goodwill Industries, 318 NLRB 1044 (1995); Phelps Community Medical Center, 295 NLRB 486, 490 (1989).

Any lack of evidence in the record is construed against the party asserting supervisory status. See Willamette Industries, Inc., 336 NLRB No. 59, slip op. at 1 (2001). The fact that the Employer has given the classification at issue the title of relief supervisor is of no consequence, as the Board has long held that a title is insufficient to establish supervisory status. See, e.g. Omnix International Corporation d/b/a Waterbed World, 286 NLRB 425 (1987).

I find that the Petitioner has failed to meet its burden of establishing that relief supervisors are statutory supervisors under the Act. The record establishes that relief supervisors earn \$2.00 more per hour than maintenance employees. However, there is little else in this record that satisfies the Petitioner's burden. Thus, the relief supervisors check on the employees to make sure that they take their breaks and that things are running smoothly. They give time cards to their supervisors for the employees on their shift, but the record does not establish any further involvement with regard to the employees' time records. There is no evidence that work assignments given by the relief supervisors are anything more than routine or require independent judgment. The relief supervisors have no authority to hire, fire, discipline, or reprimand. The relief supervisors take vacations and unit employees substitute for them.

The employees in question hold the title of "relief supervisor," but, absent more, a mere title does not establish supervisory status or meet the Petitioner's burden in this matter.

The Petitioner cites Ingram Barge Company, 336 NLRB No. 131 (2001) as support for its position. However in that matter, the position at issue was that of a pilot who was the sole

wheelhouse officer on watch 12 hours each day, operating a large vessel on the Mississippi, Ohio and Tennessee rivers. The situation there obviously called for a determination that pilots directed work in a manner that was not routine and involved independent judgment. In the instant matter, the relief supervisors' work is routine and involves checking to see that the maintenance employees take their breaks, and handing timecards up the ladder to supervision.

Based upon the record as a whole, I find that the relief supervisors are not statutory supervisors, and I shall include them in the unit.

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